



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

July 26, 2022 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2020-230

v.

Berkeley Township (Ocean)
Custodian of Record

At the July 26, 2022 public meeting, the Government Records Council (“Council”) considered the July 19, 2022 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because the Complainant was seeking records related to police personnel, Sandra Brelsford was “the appropriate custodian.” However, to the extent the same request included another recipient, in this case Custodian Karen Stallings, the request was not valid. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-5(g). Thus, Custodian Stallings did not unlawfully deny access to the Complainant’s request because, as to her, the request was invalid. N.J.S.A. 47:1A-6.
2. Because Police Department Records Custodian Brelsford requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date upon which she would respond to the request, she properly requested the extension and has borne her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. See Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011) and Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010). See also Werner v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012). Therefore, no “deemed” denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
3. Based upon the description of the requested record, the roster is the record that is responsive to the request. As such, Police Department Records Custodian Brelsford failed to bear her burden of proof that she lawfully denied access to the records responsive to the Complainant’s request. N.J.S.A. 47:1A-6. However, the GRC need not order disclosure because the Custodian did so on December 15, 2020.
4. Although Police Department Records Custodian Brelsford failed to bear her burden of proving that the denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6,

the Custodian subsequently provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that Ms. Brelsford's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Ms. Brelsford's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 26th Day of July 2022

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 28, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 26, 2022 Council Meeting**

Scott Madlinger¹
Complainant

GRC Complaint No. 2020-230

v.

Berkeley Township (Ocean)²
Custodial Agency

Records Relevant to Complaint: Via e-mail “Copies of all time cards / time sheets for all police dispatchers working on the day of November 01, 2020.”

Custodian of Record: Karen Stallings

Request Received by Custodian: November 2, 2020

Responses Made by Custodian: November 13, 2020 and November 19, 2020

GRC Complaint Received: November 23, 2020

Background³

Request and Responses:

On November 2, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to both the Custodian and Sandra Brelsford seeking the above-mentioned records. On November 13, 2020, the seventh (7th) business day following receipt of the request, Ms. Brelsford responded in writing via e-mail requesting an extension of time until November 20, 2020, to respond to the request.⁴ The Complainant via reply e-mail that same date stated he was not granting an extension. On November 19, 2020, Ms. Brelsford responded to the Complainant’s request by informing him that no time cards or time sheets for police dispatchers are maintained by the municipality; therefore, there are no records responsive to the request.

Denial of Access Complaint:

On November 23, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on November 1, 2020, he submitted his OPRA request to the Custodian and Sandra Brelsford.⁵ The Complainant stated that

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

⁴ November 3, 2020 and November 11, 2020 were State holidays.

⁵ November 1, 2020 was a Sunday.

Ms. Brelsford responded on November 13, 2020, requesting an extension of time until November 20, 2020. The Complainant stated that on that same date he sent a reply e-mail stating he was not granting an extension. The Complainant further stated that on November 19, 2020, Ms. Brelsford responded to him by stating that there were no records responsive to his request. The Complainant stated that he never received a response to his request from the Custodian.

Statement of Information:

On December 10, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 2, 2020, and contacted the Payroll Department to determine if they maintained the requested records. The Custodian certified that she was informed by Payroll Department personnel that the Police Department maintains the requested records for Police Department dispatchers. The Custodian certified that she then contacted Sandra Brelsford, because Ms. Brelsford is the person designated to handle all Police Department OPRA requests.

The Custodian certified that there is only one (1) OPRA request which formed the basis of the instant complaint, even though it was sent to two (2) persons in different departments that handle OPRA requests. The Custodian certified that “[t]here were no documents responsive.” The Custodian further certified that Ms. Brelsford in the Police Department responded to the Complainant on November 19, 2020, informing him that there are no records responsive to his request. The Custodian further certified that time sheets are not maintained for dispatchers because those employees are salaried and not paid by the hour.

Additional Submissions:

On December 10, 2020, the GRC sent to the Custodian a request for additional information. The GRC informed the Custodian that in the SOI she certified that there are no records responsive to the request because time sheets are not maintained for dispatchers who are salaried; not paid by the hour. The GRC informed the Custodian that the Complainant did not request records memorializing salary or wages, but rather time cards or time sheets. The GRC further informed the Custodian that most organizations do keep track of an employee’s time with some type of punch-in or sign-in procedure. The GRC asked the Custodian to submit a legal certification clarifying her response in the SOI.

On December 15, 2020, the Custodian forwarded the requested certification to the GRC. The Custodian certified that the Police Department uses a shift scheduling system to schedule police officers and dispatchers on a shift. The Custodian certified that in the “interest of fulfilling the spirit of OPRA” she was providing a roster. The Custodian attached to the certification a “Daily Roster with Notes” for dispatchers dated November 1, 2020.

Analysis

Validity of Request

OPRA defines a custodian as “. . . in the case of a municipality, the municipal clerk . . .” N.J.S.A. 47:1A-1.1. OPRA provides that “[a] request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed *to the appropriate custodian.*” N.J.S.A. 47:1A-5(g). (Emphasis added.)

Here, the Complainant submitted a single e-mail request seeking the records relevant to the complaint, which were Police Department records. The Complainant sent the e-mail to two (2) recipients: Deputy Clerk Karen Stallings and Sandra Brelsford. The former is the Custodian; the latter is identified in the SOI as the “Police Dept. Records Custodian.” The Custodian certified that Ms. Brelsford responded to the request because Ms. Brelsford handles the requests for Police Department records. The Custodian certified that Ms. Brelsford responded to the Complainant’s request on November 13, 2020 and November 19, 2020.

The evidence of record indicates that the Complainant, by sending a single request to two recipients, expected two separate responses. However, more than one (1) response was not necessary or required under OPRA. N.J.S.A. 47:1A-5(g) requires “a request” to be submitted to “the appropriate custodian.” There is no provision in OPRA that expressly allows a requestor to submit a single request to several recipients, compelling a separate response from each recipient. See *e.g. Caggiano v. State of N.J. Office of the Governor*, GRC Complaint No. 2014-166 (January 2015) (holding that a request sent to thirty-three (33) different recipients was invalid).

Therefore, because the Complainant was seeking records related to police personnel, Sandra Brelsford was “the appropriate custodian.” However, to the extent the same request included another recipient, in this case Custodian Karen Stallings, the request was not valid. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-5(g). Thus, Custodian Stallings did not unlawfully deny access to the Complainant’s request because, as to her, the request was invalid. N.J.S.A. 47:1A-6.

Timeliness

OPRA provides that a custodian may request an extension of time to respond to the complainant’s OPRA request, but the custodian must provide a specific date by which he or she will respond. Should the custodian fail to respond by that specific date, “access shall be deemed denied.” N.J.S.A. 47:1A-5(i).

In Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011), the custodian responded in writing to the complainant’s request on the fourth (4th) business day by seeking an extension of time to respond and providing an anticipated date by which the requested records would be made available. The complainant did not consent to the custodian’s request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in Starkey v. N.J. Dep’t of Transportation, GRC

Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009), the Custodian provided the Complainant with a written response to his OPRA request on the second (2nd) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that “because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i).”

Further, in Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010), the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause the Custodian provided a written response requesting an extension on the sixth (6th) business day following receipt of the Complainant’s OPRA request and providing a date certain on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian’s request for an extension of time [to a specific date] to respond to the Complainant’s OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

Moreover, in Werner v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012), the Council again addressed whether the custodian lawfully sought an extension of time to respond to the complainant’s OPRA request. The Council concluded that because the custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date by which the requested records would be made available, the custodian properly requested the extension pursuant to OPRA. See also Rivera, GRC 2009-317; Criscione, GRC 2010-68; and Starkey, GRC 2007-315, *et seq.*

Here, on the seventh (7th) business day following receipt of the request, Police Department Records Custodian Brelsford via e-mail requested an extension of time until November 20, 2020, to respond to the request. The Complainant, via reply e-mail on that same date, stated he was not granting an extension. Thereafter, on November 19, 2020, Ms. Brelsford responded informing the Complainant that there are no records responsive to the request.

Accordingly, because Police Department Records Custodian Brelsford requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date upon which she would respond to the request, she properly requested the extension and has borne her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. See Rivera, GRC 2009-317 and Criscione, GRC 2010-68. See also Werner, GRC 2011-151. Therefore, no “deemed” denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The Council has long held that sign-in sheets are government records subject to disclosure under OPRA. See Jackson v. Kean University, GRC Complaint No. 2002-98 (February 2004). See also Havlusch v. Borough of Allenhurst (Monmouth), GRC Complaint No. 2011-243 (Interim Order December 18, 2012). Later, in Gordon v. City of Orange (Essex), GRC Complaint No. 2013-189 (Interim Order August 27, 2013), the Council determined that “the terms ‘time sheets’ and ‘sign-in sheets’ are often used interchangeably” and that time sheets, like sign-in sheets, are also subject to disclosure.

In the response to the Complainant’s request, Ms. Brelsford informed the Complainant that there are no records responsive to the request. The Custodian, in the SOI, certified that time sheets are not maintained for dispatchers because those employees are not paid by the hour. However, in reply to the GRC’s request for additional information, the Custodian attached a “Daily Roster with Notes” (“roster”) for November 1, 2020. An examination of the roster, a copy of which was also sent to the Complainant, reveals it is for “Patrol Dispatch” personnel on November 1, 2020. The roster lists dispatchers by name and also shows the hours on duty and hours off duty for the dispatchers. This is, in effect, a time sheet for the date requested. By requesting “time cards/time sheets” the Complainant was seeking this type of timekeeping record. He did not request a specific record *titled* “time card” or “time sheet.”

Therefore, based upon the description of the requested record, the roster is the record that is responsive to the request. As such, Police Department Records Custodian Brelsford failed to bear her burden of proof that she lawfully denied access to the records responsive to the Complainant’s request. N.J.S.A. 47:1A-6. However, the GRC need not order disclosure because the Custodian did so on December 15, 2020.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]. . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following

statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although Police Department Records Custodian Brelsford failed to bear her burden of proving that the denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6, the Custodian subsequently provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that Ms. Brelsford’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Ms. Brelsford’s actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant was seeking records related to police personnel, Sandra Brelsford was “the appropriate custodian.” However, to the extent the same request included another recipient, in this case Custodian Karen Stallings, the request was not valid. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-5(g). Thus, Custodian Stallings did not unlawfully deny access to the Complainant’s request because, as to her, the request was invalid. N.J.S.A. 47:1A-6.
2. Because Police Department Records Custodian Brelsford requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date upon which she would respond to the request, she properly requested the extension and has borne her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. See Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011) and Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010). See also Werner v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012). Therefore, no “deemed” denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
3. Based upon the description of the requested record, the roster is the record that is responsive to the request. As such, Police Department Records Custodian Brelsford failed to bear her burden of proof that she lawfully denied access to the records responsive to the Complainant’s request. N.J.S.A. 47:1A-6. However, the GRC need not order disclosure because the Custodian did so on December 15, 2020.

4. Although Police Department Records Custodian Brelsford failed to bear her burden of proving that the denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6, the Custodian subsequently provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that Ms. Brelsford's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Ms. Brelsford's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

July 19, 2022